

Calendar No. 436

106TH CONGRESS
2D SESSION**S. 2081**

Entitled the “Religious Liberty Protection Act of 2000”.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 2000

Mr. HATCH introduced the following bill; which was read the first time

FEBRUARY 23, 2000

Read the second time and placed on the calendar

A BILL

Entitled the “Religious Liberty Protection Act of 2000”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Religious Liberty Pro-
5 tection Act of 2000”.

6 **SEC. 2. PROTECTION OF RELIGIOUS EXERCISE.**

7 (a) GENERAL RULE.—Except as provided in sub-
8 section (b), a government shall not substantially burden
9 a person’s religious exercise—

1 (1) in a program or activity, operated by a gov-
2 ernment, that receives Federal financial assistance;
3 or

4 (2) in any case in which the substantial burden
5 on the person's religious exercise affects, or in which
6 a removal of that substantial burden would affect,
7 commerce with foreign nations, among the several
8 States, or with Indian tribes;
9 even if the burden results from a rule of general applica-
10 bility.

11 (b) EXCEPTION.—A government may substantially
12 burden a person's religious exercise if the government
13 demonstrates that application of the burden to the
14 person—

15 (1) is in furtherance of a compelling govern-
16 mental interest; and

17 (2) is the least restrictive means of furthering
18 that compelling governmental interest.

19 (c) LIMITATION.—This Act does not apply if the only
20 basis for applying the Act is subsection (a)(2) and if the
21 government demonstrates that all similar religious exercise
22 and all substantial burdens on, or the removal of all sub-
23 stantial burdens from, similar religious exercise would not
24 lead in the aggregate to a substantial effect on commerce
25 or on activities having a substantial relation to commerce.

1 (d) REMEDIES OF THE UNITED STATES.—Nothing
 2 in this section shall be construed to authorize the United
 3 States to deny or withhold Federal financial assistance as
 4 a remedy for a violation of this Act. Nothing in this sub-
 5 section shall be construed to deny, impair, or otherwise
 6 affect any right or authority of the Attorney General, the
 7 United States, or any agency, officer, or employee of the
 8 United States, under law other than this subsection, in-
 9 cluding section 4(d), to institute or intervene in any action
 10 or proceeding.

11 **SEC. 3. ENFORCEMENT OF CONSTITUTIONAL RIGHTS.**

12 (a) PROCEDURE.—If a claimant produces prima facie
 13 evidence to support a claim alleging a violation of the Free
 14 Exercise Clause or a violation of a provision of this Act
 15 enforcing that clause, the government shall bear the bur-
 16 den of persuasion on any element of the claim, except that
 17 the claimant shall bear the burden of persuasion on wheth-
 18 er the law (including a regulation) or government practice
 19 that is challenged by the claim burdens or substantially
 20 burdens the claimant’s exercise of religion.

21 (b) LAND USE REGULATION.—

22 (1) LIMITATION ON LAND USE REGULATION.—

23 (A) INDIVIDUALIZED ASSESSMENTS.—If,
 24 in applying or implementing any land use regu-
 25 lation (including an exemption), or system of

1 land use regulations (including exemptions), a
2 government has the authority to make individ-
3 ualized assessments of the proposed uses to
4 which real property would be put, the govern-
5 ment may not impose a substantial burden on
6 the religious exercise of a religious assembly or
7 institution, or of a person in the person's home,
8 unless the government demonstrates that appli-
9 cation of the burden to that assembly, institu-
10 tion, or person—

11 (i) is in furtherance of a compelling
12 governmental interest; and

13 (ii) is narrowly tailored to further that
14 compelling governmental interest.

15 (B) EQUAL TERMS.—No government shall
16 impose or implement a land use regulation in a
17 manner that does not treat religious assemblies
18 or institutions on equal terms with nonreligious
19 assemblies or institutions.

20 (C) NONDISCRIMINATION.—No government
21 shall impose or implement a land use regulation
22 that discriminates against any assembly or in-
23 stitution on the basis of religion or religious de-
24 nomination.

1 (D) EXCLUSIONS AND LIMITS.—No gov-
 2 ernment with zoning authority shall unreason-
 3 ably exclude from the jurisdiction over which
 4 that government has authority, or unreasonably
 5 limit within that jurisdiction, assemblies or in-
 6 stitutions principally devoted to religious exer-
 7 cise.

8 (2) FULL FAITH AND CREDIT.—Adjudication of
 9 a claim of a violation of the Free Exercise Clause or
 10 this subsection in a non-Federal forum shall be enti-
 11 tled to full faith and credit in a Federal court only
 12 if the claimant had a full and fair adjudication of
 13 that claim in the non-Federal forum.

14 (3) NONPREEMPTION.—Nothing in this sub-
 15 section shall preempt State law that is equally or
 16 more protective of religious exercise.

17 **SEC. 4. JUDICIAL RELIEF.**

18 (a) CAUSE OF ACTION.—A person may assert a viola-
 19 tion of this Act as a claim or defense in a judicial pro-
 20 ceeding and obtain appropriate relief against a govern-
 21 ment. Standing to assert a claim or defense under this
 22 section shall be governed by the general rules of standing
 23 under article III of the Constitution.

24 (b) ATTORNEYS' FEES.—Section 722(b) of the Re-
 25 vised Statutes (42 U.S.C. 1988(b)) is amended—

1 (1) by inserting “the Religious Liberty Protec-
2 tion Act of 2000,” after “Religious Freedom Res-
3 toration Act of 1993,”; and

4 (2) by striking the comma that follows a
5 comma.

6 (c) PRISONERS.—Any litigation under this Act in
7 which the claimant is a prisoner shall be subject to the
8 Prison Litigation Reform Act of 1995 (including provi-
9 sions of law amended by that Act).

10 (d) AUTHORITY OF UNITED STATES TO ENFORCE
11 THIS ACT.—The United States may bring an action for
12 injunctive or declaratory relief to enforce compliance with
13 this Act.

14 (e) SOVEREIGN IMMUNITY.—Nothing in this Act
15 shall be construed to abrogate the sovereign immunity of
16 a State.

17 **SEC. 5. RULES OF CONSTRUCTION.**

18 (a) RELIGIOUS BELIEF UNAFFECTED.—Nothing in
19 this Act shall be construed to authorize any government
20 to burden any religious belief.

21 (b) RELIGIOUS EXERCISE NOT REGULATED.—Noth-
22 ing in this Act shall create any basis for restricting or
23 burdening religious exercise or for claims against a reli-
24 gious organization, including any religiously affiliated
25 school or university, not acting under color of law.

1 (c) CLAIMS TO FUNDING UNAFFECTED.—Nothing in
 2 this Act shall create or preclude a right of any religious
 3 organization to receive funding or other assistance from
 4 a government, or of any person to receive government
 5 funding for a religious activity, but this Act may require
 6 government to incur expenses in its own operations to
 7 avoid imposing a burden or a substantial burden on reli-
 8 gious exercise.

9 (d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON
 10 FUNDING UNAFFECTED.—Nothing in this Act shall—

11 (1) authorize a government to regulate or af-
 12 fect, directly or indirectly, the activities or policies of
 13 a person other than a government as a condition of
 14 receiving funding or other assistance; or

15 (2) restrict any authority that may exist under
 16 other law to so regulate or affect, except as provided
 17 in this Act.

18 (e) GOVERNMENTAL DISCRETION IN ALLEVIATING
 19 BURDENS ON RELIGIOUS EXERCISE.—A government may
 20 avoid the preemptive force of any provision of this Act by
 21 changing the policy or practice that results in a substan-
 22 tial burden on religious exercise, by retaining the policy
 23 or practice and exempting the substantially burdened reli-
 24 gious exercise, by providing exemptions from the policy or
 25 practice for applications that substantially burden reli-

1 gious exercise, or by any other means that eliminates the
2 substantial burden.

3 (f) EFFECT ON OTHER LAW.—With respect to a
4 claim brought to enforce section 2(a)(2), proof that a sub-
5 stantial burden on a person’s religious exercise, or removal
6 of that burden, affects or would affect commerce shall not
7 establish any inference or presumption that Congress in-
8 tends that any religious exercise is, or is not, subject to
9 any law other than this Act.

10 (g) BROAD CONSTRUCTION.—This Act shall be con-
11 strued in favor of a broad protection of religious exercise,
12 to the maximum extent permitted by the terms of this Act
13 and the Constitution.

14 (h) SEVERABILITY.—If any provision of this Act or
15 of an amendment made by this Act, or any application
16 of such provision to any person or circumstance, is held
17 to be unconstitutional, the remainder of this Act, the
18 amendments made by this Act, and the application of the
19 provision to any other person or circumstance shall not
20 be affected.

21 **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

22 Nothing in this Act shall be construed to affect, inter-
23 pret, or in any way address that portion of the first
24 amendment to the Constitution prohibiting laws respect-
25 ing an establishment of religion (referred to in this section

1 as the “Establishment Clause”). Granting government
 2 funding, benefits, or exemptions, to the extent permissible
 3 under the Establishment Clause, shall not constitute a vio-
 4 lation of this Act. As used in this section, the term “grant-
 5 ing”, used with respect to government funding, benefits,
 6 or exemptions, does not include the denial of government
 7 funding, benefits, or exemptions.

8 **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORA-**
 9 **TION ACT.**

10 (a) DEFINITIONS.—Section 5 of the Religious Free-
 11 dom Restoration Act of 1993 (42 U.S.C. 2000bb–2) is
 12 amended—

13 (1) in paragraph (1), by striking “a State, or
 14 subdivision of a State” and inserting “a covered en-
 15 tity or a subdivision of such an entity”;

16 (2) in paragraph (2), by striking “term” and all
 17 that follows through “includes” and inserting “term
 18 ‘covered entity’ means”; and

19 (3) in paragraph (4), by striking all after
 20 “means,” and inserting “religious exercise, as de-
 21 fined in section 8 of the Religious Liberty Protection
 22 Act of 2000.”.

23 (b) CONFORMING AMENDMENT.—Section 6(a) of the
 24 Religious Freedom Restoration Act of 1993 (42 U.S.C.
 25 2000bb–3(a)) is amended by striking “and State”.

1 **SEC. 8. DEFINITIONS.**

2 In this Act—

3 (1) the term “demonstrates” means meets the
4 burdens of going forward with the evidence and of
5 persuasion;

6 (2) the term “Free Exercise Clause” means
7 that portion of the first amendment to the Constitu-
8 tion that proscribes laws prohibiting the free exercise
9 of religion and includes the application of that pro-
10 scription under the 14th amendment to the Con-
11 stitution;

12 (3) the term “government”—

13 (A) means—

14 (i) a State, county, municipality, or
15 other governmental entity created under
16 the authority of a State;

17 (ii) any branch, department, agency,
18 instrumentality, subdivision, or official of
19 an entity listed in clause (i); and

20 (iii) any other person acting under
21 color of State law; and

22 (B) for the purposes of sections 3(a) and
23 5, includes the United States, a branch, depart-
24 ment, agency, instrumentality, subdivision, or
25 official of the United States, and any person
26 acting under color of Federal law;

1 (4) the term “land use regulation” means a law
2 or decision by a government that limits or restricts
3 a private person’s use or development of land (in-
4 cluding a structure affixed to land), if—

5 (A) the law or decision applies to 1 or
6 more particular parcels of land or to land with-
7 in 1 or more designated geographical zones; and

8 (B) the private person has an ownership,
9 leasehold, easement, servitude, or other prop-
10 erty interest in the regulated land or a contract
11 or option to acquire such an interest;

12 (5) the term “program or activity” means a
13 program or activity as defined in paragraph (1) or
14 (2) of section 606 of the Civil Rights Act of 1964
15 (42 U.S.C. 2000d–4a); and

16 (6) the term “religious exercise”—

17 (A) means any exercise of religion, whether
18 or not compelled by, or central to, a system of
19 religious belief; and

20 (B) includes—

21 (i) the use, building, or conversion of
22 real property by a person or entity intend-
23 ing that property to be used for religious
24 exercise; and

- 1 (ii) any conduct protected as exercise
- 2 of religion under the first amendment to
- 3 the Constitution.

Calendar No. 436

106TH CONGRESS
2D SESSION

S. 2081

A BILL

Entitled the “Religious Liberty Protection Act of
2000”.

FEBRUARY 23, 2000

Read the second time and placed on the calendar